

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MARK STRONG,

Plaintiff,

v.

STATE OF WASHINGTON,
WASHINGTON STATE
DEPARTMENT OF
CORRECTIONS, AIRWAY
HEIGHTS CORRECTIONS
CENTER, and SUPERINTENDENT
JAMES R. KEY,

Defendants.

NO. 2:20-CV-0461-TOR

ORDER GRANTING DEFENDANTS'
MOTION FOR JUDGMENT ON THE
PLEADINGS AND REMANDING
CASE TO STATE COURT

BEFORE THE COURT are Defendants' Motions for Judgment on the

Pleadings (ECF Nos. 4, 8). These matters were submitted for consideration
without oral argument. The Court has reviewed the record and files herein, the
completed briefing and is fully informed. For the reasons discussed below,
Defendants' Motion for Judgment on the Pleadings (ECF No. 4) is GRANTED and

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1 Defendants' Motion for Judgment on the Pleadings (ECF No. 8) is DENIED as
2 moot.

3 **BACKGROUND**

4 This case concerns injuries Plaintiff sustained after he fell while incarcerated
5 at Airway Heights Correction Center. ECF No. 6-1 at 1. On or about December 4,
6 2018, Plaintiff fell breaking his wrist and injuring his hip after stepping on a
7 wooden ramp at an entrance to a building at Airway Heights Correction Center.
8 ECF No. 6-1 at 2, ¶¶ 2.1-2.3; at 3, ¶ 2.9. The ramp was located under the roof of
9 the building, which allowed water and ice to accumulate on the ramp, creating
10 slippery conditions. ECF No. 6-1 at 2 ¶ 2.2; at 3 ¶ 2.7. Although the ramp's
11 surface was once affixed with sandpaper tape, the tape had been removed and the
12 ramp did not have any traction tape or skid resistant material at the time Plaintiff
13 fell. ECF No. 6-1 at 3 ¶¶ 2.5-2.6. There were no warning signs to alert people to
14 the dangerous conditions. ECF No. 6-1 at 3 ¶ 2.8. Plaintiff continues to
15 experience pain in his elbow, shoulder, lower back, left hip, and neck. ECF No. 6-
16 1 at 3 ¶ 2.10.

17 Plaintiff filed a Complaint in Spokane County Superior Court on November
18 16, 2020 alleging violations of state and federal law. ECF No. 1-1. Defendants
19 removed the case to this Court on the grounds that Plaintiff's claims under 42
20 U.S.C. § 1983 and *Monell* liability present federal questions. ECF No. 1 at 1.

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1 Defendants now move for judgment on the pleadings regarding Plaintiff's claims
2 under § 1983, *Monell*, and Article 1, Section 3 of the Washington State
3 Constitution. ECF Nos. 4, 8. Plaintiff opposes the motions, but requests remand to
4 State court should the Court grant Defendants' motions. ECF No. 6 at 6.

5 **DISCUSSION**

6 **I. Legal Standard**

7 "After the pleadings are closed—but early enough not to delay trial—a party
8 may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). In reviewing a
9 12(c) motion, the court "must accept all factual allegations in the complaint as true
10 and construe them in the light most favorable to the non-moving party." *Fleming*
11 *v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). "A judgment on the pleadings is
12 properly granted when, taking all the allegations in the non-moving party's
13 pleadings as true, the moving party is entitled to judgment as a matter of law."

14 *Marshall Naify Revocable Trust v. United States*, 672 F.3d 620, 623 (9th Cir.
15 2012) (quoting *Fajardo v. Cty. of Los Angeles*, 179 F.3d 698, 699 (9th Cir. 1999)).

16 "Analysis under Rule 12(c) is substantially identical to analysis under Rule
17 12(b)(6) because, under both rules, a court must determine whether the facts
18 alleged in the complaint, taken as true, entitle the plaintiff to a legal remedy."

19 *Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012) (internal quotation
20 marks and citation omitted).

1 Federal Rule of Civil Procedure 12(b)(6) provides that a defendant may
2 move to dismiss the complaint for “failure to state a claim upon which relief can be
3 granted.” Fed. R. of Civ. P. 12(b)(6). To survive dismissal, a plaintiff must allege
4 “sufficient factual matter, accepted as true, to ‘state a claim to relief that is
5 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell*
6 *Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This requires the plaintiff to
7 provide “more than labels and conclusions, and a formulaic recitation of the
8 elements.” *Twombly*, 550 U.S. at 555. When deciding, the court may consider the
9 plaintiff’s allegations and any “materials incorporated into the complaint by
10 reference[.]” *Metzler Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049,
11 1061 (9th Cir. 2008) (citing *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S.
12 308, 322 (2007)). A plaintiff’s “allegations of material fact are taken as true and
13 construed in the light most favorable to the plaintiff[,]” but “conclusory allegations
14 of law and unwarranted inferences are insufficient to defeat a motion to dismiss for
15 failure to state a claim.” *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1403 (9th Cir.
16 1996) (citation and brackets omitted).

17 **A. Plaintiff’s Federal Law Claims**

18 Plaintiff alleges federal causes of actions arising under 42 U.S.C. § 1983 and
19 *Monell v. Dep’t of Soc. Servs. For City of New York*, 436, U.S. 658 (1978). ECF
20

1 No. 6-1 at 4, at 9. Defendants argue they are not “persons” under § 1983 or
2 *Monell*, and thus are entitled to judgment on the pleadings. ECF No. 4 at 2.

3 To state a claim under § 1983, a plaintiff must establish (1) the defendant is
4 a person acting under the color of state law, and (2) the defendant’s conduct must
5 have deprived the plaintiff of rights, privileges, or immunities secured by the
6 Constitution or laws of the United States. *Anderson v. Warner*, 451 F.3d 1063,
7 1067 (9th Cir. 2006). It is well settled that States and State agencies are not
8 susceptible to suits under 42 U.S.C. § 1983. *See Will v. Michigan Dept. of State*
9 *Police*, 491 U.S. 58, 71 (1989) (holding neither a State nor its officials acting in
10 their official capacities are “persons” under § 1983); *Maldonado v. Harris*, 370,
11 F.3d 945, 951 (9th Cir. 2004) (state agency not amenable to suit under §1983).

12 Here, Defendants State of Washington, Washington State Department of
13 Corrections, Airway Heights Corrections Center, and Superintendent Key acting in
14 his official capacity are State actors and are therefore not “persons” susceptible to
15 suit under § 1983. *See* RCW 72.09.

16 Plaintiff’s claim for *Monell* liability also fails. The holding in *Monell*
17 applies only to “local government units which are not considered part of the State
18 for Eleventh Amendment purposes.” *Monell*, 436 U.S. at 690 n.54. Again,
19 Defendants are State actors, not “local government units.” They cannot be held
20 liable under *Monell*.

1 Plaintiff argues Defendants are subject to § 1983 and *Monell* liability
2 because the Washington Legislature waived sovereign immunity under RCW
3 4.96.010 and 4.92.090. ECF No. 6 at 3, at 5. Plaintiff's argument is misguided.
4 As an initial matter, Defendants are not presently asserting the defense of
5 sovereign immunity under the Eleventh Amendment; rather, they argue they are
6 not "persons" for the purposes of § 1983 claims. ECF No. 7 at 3. As Defendants
7 properly note, the defense of Eleventh Amendment immunity is separate and
8 distinct from the issue of whether Defendants are "persons" within the definition of
9 § 1983. See, e.g., *Lapides v. Bd. of Regents of Univ. Sys. of Georgia*, 535 U.S. 613
10 (2002); *Mueller v. Dep't of Pub. Safety*, No. CV 17-00571 HG-WRP, 2020 WL
11 1866428 (D. Haw. Apr. 14, 2020).

12 Further, Plaintiff misconstrues the application of RCW 4.96.010, which
13 applies only to "local governmental entities." The term "local governmental
14 entities" is narrowly defined as "a county, city, town, special district, municipal
15 corporation, . . . quasi-municipal corporation, . . . or public hospital." RCW
16 4.96.010(2). Defendants are not local governmental entities; they are State actors.
17 Thus, RCW 4.96.010 does not apply to Defendants or the case at bar.

18 RCW 4.92.090 is also inapplicable. The statute states, "[t]he state of
19 Washington, whether acting in its governmental or proprietary capacity, shall be
20 liable for damages arising out of its tortious conduct to the same extent as if it were

1 a private person or corporation.” RCW 4.92.090. While this statute affects
2 Washington State’s immunity in its own courts, the Ninth Circuit and Washington
3 courts have found it does not have any bearing on State immunity in federal courts.
4 *See McConnell v. Critchlow*, 661 F.2d 116, 117 (9th Cir. 1981) (citation omitted);
5 *Rains v. State*, 100 Wash. 2d 660, 667-68 (1983)). Thus, RCW 4.92.090 is equally
6 irrelevant in the present case.

7 Finally, Plaintiff’s references to *Yim v. City of Seattle*, 194 Wash. 2d 682,
8 686, 451 P.3d 694, 696 (2019), *as amended* (Jan. 9, 2020) and *LaPlante v. State*,
9 85 Wash. 2d 154 (1975) are irrelevant to a § 1983 analysis. Both cases involved
10 only Washington state law issues.

11 The Court finds Defendants are not “persons” against whom a § 1983 claim
12 may be brought nor are they “local government units” against whom a claim for
13 *Monell* liability may be brought. Defendants are entitled to judgment in their favor
14 on Plaintiff’s federal law claims arising under 42 U.S.C. § 1983 and *Monell*.

15 **B. Plaintiff’s State Law Causes of Action**

16 Plaintiff’s remaining causes of action allege common law negligence and
17 violations of Article 1, Section 3 of the Washington State Constitution. ECF No.
18 6-1 at 4-6. Defendants move for judgment on the pleadings regarding the
19 Washington Constitutional claims. ECF No. 8. The Court must first decide
20 whether to exercise supplemental jurisdiction over these claims.

1 A federal court may exercise supplemental jurisdiction over pendent claims
2 “that are so related to claims in the action within such original jurisdiction that they
3 form part of the same case or controversy[.]” 28 U.S.C. § 1337(a). However, if a
4 district court has dismissed all the claims over which it has original jurisdiction, it
5 may decline to exercise supplemental jurisdiction over a related claim. 28 U.S.C.
6 § 1337(c)(3). “[A] federal court should consider and weigh . . . the values of
7 judicial economy, convenience, fairness, and comity in order to decide whether to
8 exercise jurisdiction over a case brought in that court involving pendent state-law
9 claims.” *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988), superseded
10 by statute on other grounds as stated in *Stanford v. MemberWorks, Inc.*, 625 F.3d
11 550, 561 (9th Cir. 2010) (citing *United Mine Workers of America v. Gibbs*, 383
12 U.S. 715 (1966)). “[I]n the usual case in which all federal-law claims are
13 eliminated before trial, the balance of factors to be considered under the pendent
14 jurisdiction doctrine . . . will point toward declining to exercise jurisdiction over
15 the remaining state-law claims.” *Carnegie-Mellon*, 484 U.S. at 350 n.7.

16 Here, the values of judicial economy, comity, fairness, and convenience
17 weigh in favor of allowing the State court to resolve the remaining claims. This
18 case has not yet proceeded to discovery let alone trial and therefore falls within the
19 “usual case” in which a federal court should decline to exercise supplemental
20 jurisdiction over remaining state law claims. *Carnegie-Mellon*, 484 U.S. at 350

1 n.7. The Court declines to exercise supplemental jurisdiction over Plaintiff's
2 remaining state law causes of action and finds remand appropriate.

3 Consequently, the Court need not address Defendants' Motion for Judgment
4 on the Pleadings (ECF No. 8) as the matter is now moot.

5 **ACCORDINGLY, IT IS HEREBY ORDERED:**

6 1. Defendants' Motion for Judgment on the Pleadings (ECF No. 4) is
7 **GRANTED.** Plaintiff's federal causes of action arising under 42 U.S.C.
8 § 1983 and *Monell* liability against all Defendants are **DISMISSED** with
9 prejudice.

10 2. Defendants' Motion for Judgment on the Pleadings (ECF No. 8) is
11 **DENIED as moot.**

12 3. This case is hereby **REMANDED** to Washington State Superior Court
13 for Spokane County for all further proceedings.

14 The District Court Executive is directed to enter this Order, enter Judgment
15 in favor of all Defendants on Plaintiff's causes of action under 42 U.S.C. § 1983
16 and *Monell*, furnish copies to counsel, mail a certified copy to the Clerk of the
17 Spokane County Superior Court, and CLOSE the file.

18 **DATED** February 11, 2021.



19
20 A handwritten signature in blue ink that reads "Thomas O. Rice".
THOMAS O. RICE
United States District Judge